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NOV 13 2012

Board of Vocational Nursing
and Psychiatric Technicians

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General
WILLIAM D. GARDNER
Deputy Attorney General
State Bar No. 244817
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2114
Facsimile: (213) 897-2804
Attorneys for Complainant

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. PT-2008-2325

SCOTT ALLEN ROGERS
7005 Cristobal
Atascadero, CA 93422

A C C U S A T I O N

Psychiatric Technician License No. PT
31306

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about May 13, 2002, the Board of Vocational Nursing and Psychiatric Technicians issued Psychiatric Technician License Number PT 31306 to Scott Allen Rogers (Respondent). The Psychiatric Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender and/or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4521 of the Code states:

"The board may suspend or revoke a license issued under this chapter [the Psychiatric Technicians Law (Bus. & Prof Code, 4500, et seq.)] for any of the following reasons:

"(a) Unprofessional conduct

...

"(e) Giving any false statement or information in connection with an application.

"(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

...

"(m) The commission of any act punishable as a sexually related crime, if that act is substantially related to the duties and functions of the licensee.

"(n) The commission of any act involving dishonesty, when that action is substantially related to the duties and functions of the licensee.

....

6. California Code of Regulations, title 16, section 2564.1 states:

"If the board or its designee asks a licensee to provide criminal history information, a licensee shall respond to that request within 30 days. The licensee shall make available all documents and other records requested and shall respond with accurate information."

7. California Code of Regulations, title 16, section 2564.1 states, in pertinent part:

“In addition to the conduct described in Section 4521(a) of the Code, “unprofessional conduct” also includes, but is not limited to, the following:

• • •

“(b) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

“(c) Failure to cooperate and participate in any board investigation. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

“(d) Failure to report to the board within 30 days any of the following:

• • •

“(2) The arrest of the licensee.

“(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

• • • •

COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

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4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Substantially Related Criminal Conviction)**

6 9. Respondent is subject to disciplinary action under section 4521, subdivision (f), in
7 that Respondent sustained a criminal conviction substantially related to the qualifications,
8 functions and duties of a psychiatric technician. The circumstances are as follows:

9 a. On or about November 4, 2009, in the criminal proceeding entitled *The People of*
10 *the State of California v. Scott Allen Rogers* (Super. Ct. San Luis Obispo County, 2009, No.
11 M000422809), respondent entered a plea of nolo contendere and was convicted of one count of
12 violating Penal Code section 240 [assault]. The circumstances surrounding the conviction are
13 that on or about July 4, 2008, while working as a psychiatric technician at Atascadero State
14 Hospital, Respondent fondled the breast of a female co-worker, victim J.B. The incident was
15 witnessed by victim J.B. and her fellow coworker, E.C. Following an investigation by the
16 Atascadero State Hospital, Respondent was arrested and later charged with one count of violating
17 Penal Code section 243.4 [sexual battery] and two counts of violating Penal Code section 136.1
18 [witness intimidation]. Pursuant to a plea agreement, these charges were dismissed and
19 respondent pled no contest to an added charge of assault.

20 b. On or about November 29, 2011, in the criminal proceeding entitled *The People*
21 *of the State of California v. Scott Allen Rogers* (Super. Ct. San Luis Obispo County, 2011, No.
22 M000461995), respondent entered a plea of nolo contendere and was convicted of one count of
23 violating Penal Code section 240 [assault]. The circumstances surrounding the conviction are
24 that on or about June 19, 2011, Respondent was arrested after officers from the City of
25 Atascadero Police Department responded to a domestic dispute in which Respondent had grabbed
26 his 19-year-old son by the throat and threatened him with a 5-inch hunting knife. Respondent
27 was later charged with violating Penal Code section 245(a) [assault with a deadly weapon].

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1 Pursuant to a plea agreement, this charge was later dismissed and respondent pled no contest to an
2 added charge of assault.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Act Punishable as a Sexually-Related Crime)**

5 10. Respondent is subject to disciplinary action under section 4521, subdivision (m), in
6 that Respondent committed an act punishable as a sexually-related crime that was substantially
7 related to the duties and functions of a psychiatric technician. Complainant refers to and by this
8 reference incorporates the allegations set forth above in paragraph 9, subparagraph a, inclusive, as
9 though set forth fully herein.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct: Failure to Cooperate with Board Investigation)**

12 11. Respondent is subject to disciplinary action under section 4521, subdivision (a), in
13 conjunction with California Code of Regulations, title 16, section 2564.1, subdivisions (b) and
14 (c), in that Respondent failed to cooperate with a Board investigation and failed to provide to the
15 Board, lawfully requested copies of certain documents. The circumstances are as follows:

16 a. **Sexual Harassment Investigation:** On or about March 22, 2010, the Board sent
17 correspondence to Respondent requesting documents and information related to the sexual
18 harassment and witness intimidation charges brought against Respondent and his eventual
19 conviction for assault, the details of which are set forth in paragraph 9, subparagraph a, above.
20 Respondent failed to respond to this correspondence, and on or about November 16, 2010, the
21 Board sent Respondent a second such request for documents and information. Respondent failed
22 to respond to the Board's second request, and on or about April 19, 2011, the Board sent
23 Respondent a third such request for documents and information. Respondent failed to respond to
24 the Board's third request, and on or about June 26, 2012, the Board sent respondent a "Final
25 Notice" for the requested documents and information. Finally, on or about July 18, 2012, nearly
26 two (2) years after it had initially requested documents and information from Respondent, the
27 Board received a one-page letter from respondent explaining the circumstances of the sexual
28 harassment charges and witness intimidation charges brought against him.

1 b. **Assault with a Deadly Weapon Investigation:** On or about June 27, 2011, the
2 Board sent correspondence to Respondent seeking documents and information related to his 2011
3 arrest for assault with a deadly weapon, the details of which are set forth above in paragraph 9,
4 subparagraph b. Respondent failed to respond to this request, and on June 28, 2012, the Board
5 sent Respondent a "Final Notice" requesting documents and information related to the assault
6 with a deadly weapon charges and his eventual conviction for battery. Finally, on or about July
7 18, 2012, more than a year after it initially requested documents and information, the Board
8 received correspondence from Respondent explaining the circumstances surrounding the incident.

9 c. **Reckless Driving Investigation:** On or about June 12, 2010, Respondent was
10 arrested and cited for reckless driving after officers from the City of Morro Bay Police
11 Department observed Respondent recklessly driving a pickup truck in an ocean front parking lot.
12 Specifically, the officers observed Respondent accelerating wildly, spinning his wheels, skidding
13 sideways and losing control of his vehicle in the parking lot, thereby endangering the many
14 pedestrians and other vehicles in the lot, as well as a 12-year-old passenger in his vehicle and two
15 (2) dogs that were unsecured in the open bed of the truck. On or about October 1, 2012, the
16 Board sent correspondence to Respondent requesting documents and information related to this
17 arrest. Respondent failed to respond to this request, and on or about November 11, 2010, the
18 Board sent a second such request for documents and information. Respondent failed to respond
19 to the second request, and on or about April 19, 2011, the Board sent a third such request for
20 documents and information. To date, Respondent has not responded to these requests.

21 d. **Disturbing the Peace Investigation:** On or about April 6, 2006, Respondent was
22 arrested for unlawful possession of marijuana. As a result of this incident, he was later charged
23 with and convicted of disturbing the peace in the criminal matter entitled *The People of the State*
24 *of California v. Scott Allen Rogers* (Super. Ct. San Luis Obispo County, 2006, No. M000386876).
25 On or about May 19, 2006, the Board sent correspondence to Respondent requesting documents
26 and information related to his April 6, 2006, arrest. Respondent failed to respond to this request,
27 and on April 17, 2007, the Board sent a second letter to Respondent requesting documents and
28 information related to his arrest and ultimate conviction for disturbing the peace. Respondent

1 failed to respond to this request, and on July 25, 2007, the Board sent a third such request for
2 documents and information. Respondent failed to respond to this request.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct: Failure to Report Conviction)**

5 12. Respondent is subject to disciplinary action under section 4521, subdivision (a), in
6 conjunction with California Code of Regulations, title 16, section 2564.1, subdivisions (d)(3), in
7 that Respondent failed to report a criminal conviction to the Board within 30 days of the
8 conviction. The circumstances are that Respondent failed to report any of the criminal
9 convictions set forth in paragraphs 9 and 11, above. Complainant refers to and by this reference
10 incorporates the allegations set forth above in paragraphs 9 and 11 as though set forth fully
11 herein.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct: Failure to Report Arrest)**

14 13. Respondent is subject to disciplinary action under section 4521, subdivision (a), in
15 conjunction with California Code of Regulations, title 16, section 2564.1, subdivisions (d)(2), in
16 that Respondent failed to report an arrest to the Board within 30 days of the arrest. The
17 circumstances are that Respondent failed to report any of the arrests set forth in paragraphs 9 and
18 11, above. Complainant refers to and by this reference incorporates the allegations set forth
19 above in paragraphs 9 and 11 as though set forth fully herein.

20 **SIXTH CAUSE FOR DISCIPLINE**

21 **(False Statement in Connection with Application)**

22 14. Respondent is subject to disciplinary action under section 4521, subdivision (e), in
23 that Respondent provided false information to the Board in connection with an application for
24 licensure. The circumstances are that in June 2011, Respondent submitted a license renewal
25 application which contained the following question: "Since you last renewed your license, have
26 you . . . been convicted of any crime in this or any other state, the United States, or other
27 country?" To this question, Respondent falsely responded "No".

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Substantially-Related Dishonest Act)**

3 15. Respondent is subject to disciplinary action under section 4521, subdivision (n), in that
4 Respondent engaged in an act of dishonesty that was substantially related to the duties and
5 functions of a psychiatric technician. The circumstances are that when providing his explanation
6 of the circumstances surrounding the sexual harassment and witness intimidation charges set forth
7 above in paragraph 9, subparagraph a, Respondent made several misrepresentations to the Board.
8 Those misrepresentations are as follows:

9 a. Respondent falsely stated that at the time of the incident he was not even in the
10 presence of the victim J.B., despite the fact that he had admitted to investigating officers that he
11 had been in the victim's presence, had inadvertently touched her and had apologized to her.

12 b. Respondent falsely represented that, after its investigation, Atascadero State Hospital
13 had declined to discipline him, when in fact his dismissal from employment was upheld following
14 a Skelly hearing.

15 c. Regarding the witness intimidation charges, Respondent falsely stated the these charges
16 were dropped because the witness in question was a male, six feet, four inches tall who weighed
17 in excess of 250 pounds, when in fact the charges were dropped pursuant to a plea agreement and
18 the witnesses in question were two women: the victim J.B. and witness E.C.

19 d. Respondent falsely stated that no fines were imposed as a result of his conviction, when
20 in fact a \$500.00 fine was imposed.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
24 issue a decision:

25 1. Revoking or suspending Psychiatric Technician License Number PT 31306, issued to
26 Scott Allen Rogers;

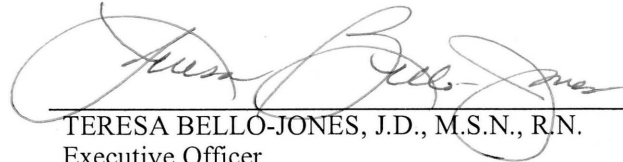
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1 2. Ordering Scott Allen Rogers to pay the Board of Vocational Nursing and Psychiatric
2 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to
3 Business and Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.
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7 **NOV 13 2012**
8 DATED: _____



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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